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Retirement System
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April 29, 2010

TO: All County Superintendents of Schools
District Superintendents of Schools
Community College Districts and
Other Employing Agencies

FROM: Jack Ehnes
Chief Executive Officer

SUBJECT: Employer Directive 2010-01
Supersedes Employer Directive 2009-02
Post-Retirement Earnings Changes for 2010-11 Fiscal Year

PURPOSE

This employer directive is intended to inform and remind employers of:

- The application of earnings limitations to retired CalSTRS members.
- The post-retirement earnings limit for the 2010-11 fiscal year is increased to \$31,020.
- New restrictions beginning July 1, 2010 for retirees who are under age 60.
- The extension of sunsets to existing restrictions from July 1, 2010 to July 1, 2012.
- Requirements on employers to inform CalSTRS retired members who perform creditable service about the annual earnings limit and to report post-retirement earnings to CalSTRS using the correct reporting code.
- The post-retirement excess earnings notification process.
- Examples of the financial consequences of exceeding the earnings limit.
- Restrictions on hiring retired CalSTRS members who received a retirement incentive through CalSTRS.
- Restrictions on hiring retired CalSTRS members in classified position.

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SCOPE

This directive contains information for county superintendents of schools, school districts, community college districts, and any agencies that utilize retired members of the Defined Benefit Program (referred to in this directive as “retired CalSTRS members”) to perform creditable service. There are different limitations imposed on retired participants in the Cash Balance Benefit Program, which are not addressed in this directive.

DISCUSSION

Application of Earnings Limit

Section 24214¹ imposes limitations on any retired CalSTRS member who returns to work and **performs creditable service as either an employee, employee of a third party or an independent contractor**. Activities considered to be creditable service and, therefore, subject to the earnings limit are listed in section 22119.5. Generally, positions in grades pre-kindergarten through community college that requires a credential, certificate, permit, or require an employee to meet minimum standards adopted by the Board of Governors of the California Community Colleges, or for which the employer is eligible to receive state apportionment, are considered creditable service.

2010-11 Post-Retirement Earnings Limit

The post-retirement earnings limit for the 2010-11 fiscal year is \$31,020. The limit is adjusted annually based on the average salary of Defined Benefit Program members. Members receiving disability retirement benefits have a different earnings limit, and the basis for calculating that limit has not changed.

New Restriction for Retirees who are Under Age 60

Chapter 306, Statutes of 2009 (Assembly Bill 506) establishes that, beginning July 1, 2010, retired CalSTRS members who are under age 60 and have been retired for less than six months will be subject to a new restriction if they return to CalSTRS-covered employment during that time. If the retired member returns to work during this period, CalSTRS will reduce his or her retirement benefit dollar-for-dollar by an amount equal to his or her earnings. This change applies to members who retired on or after January 1, 2010. There are no exemptions from this provision, including any exemptions later in this directive.

CalSTRS will not begin tracking their earnings until July 1, 2010. CalSTRS will track the retired member’s earnings until his or her 60th birthday or until six months after his or her retirement effective date, whichever is sooner. For example, if a 57 year-old member retired on February 1, 2010, CalSTRS would track her earnings from July 1, 2010 to August 1, 2010 and would reduce her benefits by any earnings during that period. If she

¹Any reference to a section of California law refers to the Education Code

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works February 1, 2010 through June 30, 2010, those earnings are subject to the annual post-retirement earnings limit of \$30,580 for the 2009-10 fiscal year. This restriction is in addition to the annual earnings limit. Any amount the retiree receives while under the age 60 restriction will count against the annual post-retirement earnings limit for the appropriate fiscal year. Both restrictions apply simultaneously.

Other Legislative Changes

The exemptions under sections 24216.5 (K-12 Direct Instruction and Teacher Support exemption) and 24216.6 (Remedial Education exemption) were amended by Chapter 306 to apply to members who retired on or before January 1, 2009. In addition, the sunset date for the exemptions under sections 24214, 24216, 24216.5 and 24216.6 are extended from July 1, 2010 to July 1, 2012.

The exemption under section 24216 (Emergency Employment and Limited Term Appointment), was amended such that the exemption can be granted for no more than 24 consecutive months. CalSTRS can no longer grant an Emergency Employment exemption for a retired member whose termination was the basis for the vacant administrative position.

CalSTRS must receive the earnings exemption certification and required documentation no later than June 30 of the school year for which the exemption will apply.

Notification and Reporting of Post-Retirement Earnings by Employer

Section 22461 requires the employer to notify retired members of the earnings limitation and report earnings to CalSTRS each month. All post-retirement earnings must be reported with member code 2 and assignment code 61.

Post-Retirement Excess Earnings Process

If a member who is retired for service, earns compensation in excess of the earnings limit as an employee, an employee of a third party, or an independent contractor, section 24214(g) requires CalSTRS to reduce the member's retirement benefit dollar-for-dollar by the amount of compensation that exceeds the earnings limit, until the amount withheld equals the excess earnings up to a maximum of the member's annual retirement benefit.

CalSTRS sends two notifications to the retired member. The first notification is sent when post-retirement earnings are reported by the employer. The letter is called the *Initial Post-Retirement Earnings Letter* (SR 1369.1). This letter states the current earnings limit and what will occur if it is exceeded. When the employer reports post-retirement earnings equal to one half of the earnings limit, CalSTRS sends the second letter, called the *Post-Retirement Earnings Mid-Limit Letter* (SR 1369.2) notifying the member of the dollar amount reported to date, and reminding the member of the consequences of exceeding the earnings limit.

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When a member exceeds the earnings limit, CalSTRS sends the member a letter notifying her or him that the excess earnings will be withheld from his or her monthly retirement benefit. CalSTRS will send the letter and give at least 30 days notice before commencing collection.

Some retired members may qualify for an exemption from the post-retirement earnings limit if they meet the eligibility criteria specified in section 24214, 24216, 24216.5 or 24216.6. Exemptions are subject to CalSTRS approval. Exemption requests should be submitted before the retired member begins working. The exemption forms are available at www.CalSTRS.com. Please refer to Attachment I for additional information about the post-retirement earnings limit exemptions. Effective January 1, 2010, CalSTRS must receive the exemption request no later than June 30 of the school year for which the exemption will apply.

Employers can assist retired members and CalSTRS by taking the following actions:

- Inform the member of the current fiscal year earnings limit and determine if the member may qualify for a CalSTRS exemption, subject to CalSTRS approval.
- Determine if the member has a consecutive 12-month break from CalSTRS-covered service. If so, there is no earnings limit in effect through June 30, 2012.
- If the member qualifies for a post-retirement earnings limit exemption, file it prior to, or as soon as, the retired member begins working and before June 30 of the school year for which the exemption will apply. CalSTRS will notify the employer and the retired member, in writing, if the exemption request is granted or denied.
- Assist the retiree to track their earnings so they will not exceed the earnings limit.

Examples of the Financial Consequences of Exceeding the Earnings Limit

Below are three scenarios of members who have exceeded one or both of the earnings limit

EXAMPLE 1:

Mrs. Smith retired June 30, 2008. She returned to employment in the California public school system 14 months later on September 1, 2009 as a retired member. She is exempt from the earnings limit because she had a consecutive, 12-month break in service. Mrs. Smith's employer does not need to file an exemption request and CalSTRS will not collect earnings in excess of the limit.

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EXAMPLE II:

Mr. Jones, age 65, retires June 30, 2010. He returns to employment in the California public school system two months later on September 1, 2010 as a retired member for two districts. By March 2011, he has earned \$20,000 from District 1 and \$20,000 from District 2, for a total of \$40,000, exceeding the earnings limit by \$8,980 ($\$40,000 - \$31,020 = \$8,980$). He is not exempt from the earnings limit because he did not have a consecutive, 12-month break in service. CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

When CalSTRS begins collection of the excess earnings, Mr. Jones' excess earnings for fiscal year 2010-11 of \$8,980 will be collected from his \$5,000.00 gross monthly retirement benefit of as follows:

	1st Month	2nd Month	Total
Monthly retirement benefit	\$5,000	\$5,000	\$10,000
Deduction of Excess Earnings (up to 100 percent of monthly benefit)	\$5,000	\$3,980	\$8,980
Benefit Mr. Jones receives after deduction	\$ - 0 -	\$1,020	\$1,020

EXAMPLE III:

Ms. Garcia, age 59 and 4 months, retires June 30, 2010. She returns to employment in the California public school system on July 1, 2010 as a retired member and turns age 60 on March 1, 2011. She returned to work prior to age 60 and does not have a six month break in service.

Ms. Garcia earns \$2,700 each month for a total of \$32,400 by June 30, 2011. During the first six months after her retirement effective date Ms. Garcia earns \$16,200. Because she is under age 60, she was restricted from returning to work and earning any amount for the first six months after her retirement effective date. In addition, she exceeded the annual earnings limit by \$1,380 ($\$32,400 - \$31,020 = \$1,380$). She is not exempt from the earnings limit because she did not have a consecutive, 12-month break in service. CalSTRS is required to collect \$17,580 ($\$16,200 + \$1,380 = \$17,580$).

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When CalSTRS begins collection of the excess earnings, the \$17,580 will be collected from her \$7,000.00 gross monthly retirement benefit as follows:

	1st Month	2nd Month	3rd Month	Total
Monthly retirement benefit	\$7,000	\$7,000	\$7,000	\$21,000
Deduction of Excess Earnings (up to 100 percent of monthly benefit)	\$7,000	\$7,000	\$3,580	\$17,580
Benefit Ms. Garcia receives after deduction	\$ - 0 -	\$ - 0 -	\$3,420	\$3,420

Classified Position Restriction

CalSTRS retirees may not be employed after retirement in classified positions in the public school system except under two circumstances: (1) when a K-12 school needs an aide in a class with a high pupil-to-teacher ratio, or (2) to provide one-on-one instruction in remedial classes or for underprivileged students (section 45134 and section 88033, respectively).

Retirement Incentive Restrictions

A member who retired with a CalSTRS retirement incentive under either section 22714 or section 22714.5 will lose the increased retirement benefit attributable to either incentive if he or she returns to direct employment work in any capacity, including in permissible classified service, within five years of retirement for the school district, community college district, or county office of education that granted the member the retirement incentive. This limitation does not apply to retired members working as an independent contractor or employed by a third party, but the post-retirement earnings limit still applies. Additional information on both retirement incentives is available in Employer Directive 2003-06.

ACTION

In accordance with section 22461, upon retaining the services of a retired member either as an employee, an employee of a third party, or an independent contractor, the employer is required to:

- Notify the retired member of the new earnings limit.

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- Maintain accurate records of the retired member's earnings.
- Report those earnings to the retired member and to CalSTRS monthly, using member code 2 and assignment code 61, regardless of the method of payment or the fund from which the payments were made.

If you have questions regarding the post-retirement earnings limit, please log on to the CalSTRS Web site at www.CalSTRS.com, click on "member," then click on "working after retirement," or call 800-228-5453 to speak with a Customer Service Representative. You may also access prior Post-Retirement Employer Directives and Retirement Incentive Employer Directives at the CalSTRS Web site.

Attachment

SUPERSEDED

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Post-Retirement Earnings Limit Exemption Matrix

Exemption	Required Form	Eligibility	Education Code
12-Month Break	No Form Required	No creditable service performed for at least 12 consecutive months after the most recent retirement.	Education Code section 24214(e).
K-12 Direct Instruction and Teacher Support	Form SR0126 Direct Classroom/ Remedial Exemption form	<ul style="list-style-type: none"> • Effective date of retirement on or before January 1, 2009. • Employment in a school district for: <ul style="list-style-type: none"> ○ K-12 direct classroom instruction. ○ Special education program instruction and pupil services. ○ English language learner program pupil instruction. • Employment to support these programs: <ul style="list-style-type: none"> ○ Pre-Internship Teaching Program ○ Alternative certification ○ School Paraprofessional Teacher Training Program ○ Individuals completing student teaching assignments ○ Beginning Teacher Support and Assessment 	Education Code Section 24216.5
Exemption Certification for Classroom/Remedial Education	Form SR0126 Direct Classroom/ Remedial Exemption form	<ul style="list-style-type: none"> • Effective date of retirement on or before January 1, 2009. • Employment in direct remedial instruction for grades 2-12: <ul style="list-style-type: none"> ○ Before school ○ After school ○ Intersession ○ Summer school ○ Combination of above 	Education Code Section 24216.6

Post-Retirement Earnings Limit Exemption Matrix

Exemption	Required Form	Eligibility	Education Code
Exemption Certification for Emergency Employment of Retired Member	Form SR0165 Parts I & II Exemption certification for emergency employment of retired member	<ul style="list-style-type: none"> • Employment performing creditable service for a vacant administrative position requiring highly specialized skills in an emergency. • Exemption limited to 24 consecutive months from date of appointment or assignment. • Employment must be reported to governing body of employer in a public meeting. • Recruitment to permanently fill vacancy is expected to extend several months. • Vacancy occurs due to circumstances beyond the employer's control. • Vacancy is not due to the termination of the retired member seeking the exemption. 	Education Code Section 24216
Exemption Certification for Limited Term Appointment/Assignment	Form SR0164 Exemption certification for limited-term appointment/assignment of a retired member	<ul style="list-style-type: none"> • Exemption limited to 24 consecutive months from date of appointment or assignment. • Member appointed as: <ul style="list-style-type: none"> ○ Trustee or administrator by the Superintendent of Public Instruction ○ Trustee under the Immediate Intervention/Underperforming Schools Program ○ Trustee under the High Priority Schools Grant Program • Member assigned by: <ul style="list-style-type: none"> ○ County superintendent of schools to a financially insolvent employer 	Education Code Section 24216